

TENTATIVE RULINGS for CIVIL LAW and MOTION

August 20, 2010

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6941

TENTATIVE RULING

Case: **Citibank South Dakota, N.A. v. Alistar**
Case No. CV G 09-3260

Hearing Date: **August 20, 2010** **Department Fifteen** **9:00 a.m.**

Plaintiff's unopposed motion to compel responses to form and supplemental interrogatories, and to deem requests for admissions admitted and for sanctions is **GRANTED**. (Code Civ. Proc., §§ 2023.010 et seq., 2030.290, & 2033.280; Cal. Rules of Court, rule 3.1030.) Plaintiff's requests for admissions are deemed admitted.

Defendant shall serve **verified** responses to Plaintiff's form interrogatories and supplemental interrogatories, without objections, to Plaintiff by **September 20, 2010**.

Defendant shall pay Plaintiff \$880.00 in sanctions by **September 20, 2010**. (Dec. of G.S. Walla, ¶¶ 1-5.) Plaintiff's counsel filed notice of intent to submit the motions on the moving papers without appearing at the hearing pursuant to California Rules of Court, rule 3.1304(c). Thus, the attorney's estimated time spent at the hearing on the motion to compel was not included in the sanctions award.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **In re claim of Jeannie M. Daloian**
Case No. CV PT 10-1815

Hearing Date: **August 20, 2010** **Department Fifteen** **9:00 a.m.**

The People are **DIRECTED TO APPEAR** to advise the Court about whether the People intend to file a petition of forfeiture and if they do, whether there is a related criminal action. A judgment of forfeiture requires, as a condition precedent thereto, that a defendant be convicted in an underlying or related criminal action of an offense specified in Health and Safety Code

section 11470, subdivision (f) or (g) which offense occurred within five years of the seizure of the property subject to forfeiture or within five years of the notice of intent to seek forfeiture. (Health and Safety Code, § 11488.4, subd. (i)(3).)

TENTATIVE RULING

Case: **Maggenti v. First American Title Insurance Company et al.**

Case No. CV CV 10-913

Hearing Date: **August 20, 2010** **Department Fifteen** **9:00 a.m.**

Defendant First American Title Insurance Company's request for judicial notice is **GRANTED**. (Evid. Code, § 452.)

Defendant First American Title Insurance Company's demurrer to complaint is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10.) The complaint fails to state in each cause of action, the party or parties to whom it is directed. (Cal. Rules of Court, rule 2.112.(4).) The complaint fails to identify which defendant committed or failed to commit the alleged actions, making it impossible for Defendant to determine what issues must be admitted or denied, or what counts or claims are directed to it. (*Khoury v. Maly's of California, Inc.* (1983) 14 Cal.App.4th 612, 616.) Further, it appears that plaintiffs are attempting to allege a cause of action for declaratory relief to have the Court declare that the trustee's sale was improper and that it be set aside. However, in order to state a cause of action to set aside a trustee's sale, plaintiff must allege that they previously tendered the entire outstanding obligation on the loan secured by the deed of trust. (*Humboldt Sav. Bank v. McCleverty* (1911) 161 Cal. 285, 290.) Plaintiffs fail to allege that they previously tendered the entire loan amount to defendants. Finally, Plaintiffs' second cause of action is for an injunction. An injunction is a remedy, not a cause of action. (Code Civ. Proc., §§ 525 & 526.) An injunction may be granted when it appears by the pleading that Plaintiffs are entitled to the relief demanded and the relief consists in restraining the performance or continuance of the act complained of. (*Id.*) Plaintiffs fail to seek an order restraining any act or the continuance of any act.

Plaintiffs must file a first amended complaint **by September 3, 2010**.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.